

**REMARKS**

Claims 1-50 are all the claims pending in the application.

The numbering of claim 15 has been corrected responsive to the issue raised by the examiner in the Office action.

Applicant notes with appreciation the indication of allowable subject matter recited in claims 15, 18, 19, 21, 23, 34, 36 and 37, but respectfully traverses the rejection of the remaining claims.

The central feature of the claimed invention is the measurement of the time variability of the received power level and sending that information to the radio network controller for use in the assignment of resources. Tiedemann does not teach measurement of time variability of received power level. Takenaka measures it, but does not send this information to the RNC and suggests no reason why one would do so. This was explained in the response filed March 18, 2010. The examiner has now agreed that Takenaka does not teach sending the information to the RNC, but argues that Tiedemann teaches sending its measurements to the RNC, and Takenaka would teach simply using different measurements, which would also be sent to the RNC as taught in Tiedemann. What the examiner overlooks is that neither of Tiedemann nor Takenaka suggest any benefit in sending the time variability of the received power level to the RNC. The Takenaka mobile terminal undoubtedly measures other things as well, e.g., its remaining battery power, and it does not send that information to the RNC because the RNC has no use for that information. An artisan reading these two references would not see any use for the time variability information at the RNC, and would not send it for no reason.

The examiner has not given any reason why an artisan would have designed a system so that the time variability information measured in Takenaka would be sent to the RNC. It is not enough to say simply “because it is measured,” yet there is no other reason to send it, other than through hindsight after reviewing the present application.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

/DJCushing/  
David J. Cushing  
Registration No. 28,703

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

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